

## SENATE BILL NO. 325

INTRODUCED BY D. MAHLUM, SLITER, BALES, BARRETT, BERRY, BOHLINGER, BUTCHER, BUZZAS,  
CHRISTIAENS, E. CLARK, COCCHIARELLA, COLE, CRISMORE, DALE, DELL, DEPRATU, DOHERTY,  
EKEGREN, ELLIS, ESP, FACEY, FORRESTER, FRANKLIN, GALLUS, GALVIN-HALCRO, GILLAN, GOLIE,  
GROSFIELD, HALLIGAN, HARRINGTON, JENT, JERGSON, KAUFMANN, KEANE, KITZENBERG,  
LAWSON, LEE, LEHMAN, LENHART, LINDEEN, MANGAN, MCNUTT, NELSON, OLSON, PATTISON,  
PRICE, RASER, RIPLEY, ROME, ROUSH, RYAN, SCHMIDT, SCHRUMPF, SHEA, SOMERVILLE, STORY,  
TASH, TESTER, B. THOMAS, WALTERS, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING RURAL COOPERATIVE LAWS;  
CLARIFYING THE DESCRIPTION OF CLASS NINE PROPERTY AS IT RELATES TO RURAL ELECTRIC  
COOPERATIVES; REVISING THE DEFINITION OF "RURAL AREA"; REQUIRING THAT A COOPERATIVE'S  
ARTICLES OF INCORPORATION INCLUDE PROVISIONS FOR CLASSIFICATION OF MEMBERS;  
CLARIFYING COOPERATIVE MEMBERSHIP AND VOTING DISTRICT PROVISIONS; PROVIDING THAT POLE  
ATTACHMENT MATTERS ARE GOVERNED BY FEDERAL LAW IN CERTAIN MUNICIPAL AREAS; AMENDING  
SECTIONS 15-6-141, 35-18-102, 35-18-104, 35-18-203, 35-18-301, AND 35-18-313, MCA; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-6-141, MCA, is amended to read:

**"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property  
includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations  
of an electric power company that owns or operates transmission or distribution facilities or both,  
including, if congress passes legislation that allows the state to tax property owned by an agency created  
by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or  
operated by a public agency created by the congress to transmit or distribute electric energy produced at  
privately owned generating facilities, not including rural electric cooperatives. However, rural electric  
cooperatives' property used for the sole purpose of serving customers representing less than 95% of the

1 electric consumers located within the incorporated limits of a city or town of more than 3,500 persons  
2 in which a centrally assessed electric power company also owns property ~~and~~ or serving an incorporated  
3 municipality with a population that is greater than 3,500 persons formerly served by a public utility that  
4 after January 1, 1998, received service from the facilities of an electric cooperative is included. For  
5 purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters,  
6 office, shop, or other similar facility.

7 (b) allocations for centrally assessed natural gas companies having a major distribution system in  
8 this state; and

9 (c) centrally assessed companies' allocations except:

10 (i) electrical generation facility property included in class thirteen;

11 (ii) property owned by cooperative rural electric and cooperative rural telephone associations and  
12 classified in class five;

13 (iii) property owned by organizations providing telephone communications to rural areas and  
14 classified in class five;

15 (iv) railroad transportation property included in class twelve;

16 (v) airline transportation property included in class twelve; and

17 (vi) telecommunications property included in class thirteen.

18 (2) Class nine property is taxed at 12% of market value."

19  
20 **Section 2.** Section 35-18-102, MCA, is amended to read:

21 **"35-18-102. Definitions.** ~~(1) Corporations organized under this chapter and corporations which~~  
22 ~~become subject to this chapter in the manner hereinafter provided are hereinafter referred to as~~  
23 ~~"cooperatives".~~

24 ~~———(2)~~ In this chapter, unless the context otherwise requires, the following definitions apply:

25 (1) "Broadband" means transmission facilities capable of handling frequencies greater than those  
26 required for high grade voice communication, higher than 4 kilohertz.

27 ~~(a)(2)~~ "Cable television system" means a system that receives and amplifies the signals broadcast  
28 by one or more television stations and redistributes the signals to subscribing members of the public for  
29 a fixed or periodic fee by wire, cable, microwave, or other means, whether ~~such~~ the means are owned or  
30 leased.

~~(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).~~

(3) "Cooperative" means a corporation organized under this chapter or a corporation that becomes subject to the provisions of this chapter.

~~(e)(4)~~ "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife in a cooperative as provided by the articles of incorporation or bylaws of the cooperative, including persons admitted to joint membership.

~~(d)(5)~~ "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or an agency thereof of a state or political subdivision, or any body politic other organization or group of persons.

~~(e)(6)~~ "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means;

(a) any an area not included within the boundaries of any an incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and to March 17, 1939;

(b) every an incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971;

(c) a former rural area annexed by a municipality and subject to 69-5-109; or

(d) an incorporated municipality that was served by a public utility that sold the public utility's distribution facilities within that municipality to an electric cooperative after January 1, 1998."

**SECTION 3. SECTION 35-18-104, MCA, IS AMENDED TO READ:**

**"35-18-104. Exemption from jurisdiction of the public service commission -- federal pole regulation.** Cooperatives and foreign corporations transacting business in this state pursuant to this chapter;

(1) shall be are exempt in all respects from the jurisdiction and control of the public service commission of this state; and

(2) if they operate in a rural area described in 35-18-102(6)(c) or (6)(d), must comply with the provisions of 47 U.S.C. 224 SHALL USE THE FORMULAS PROVIDED IN POLE ATTACHMENT RULES OF THE FEDERAL COMMUNICATIONS COMMISSION OR SUCCESSOR FORMULAS with respect to any matters pertaining to rates, terms,

1 or conditions of any pole attachment agreement between themselves and any pole tenant or lessee MADE  
2 AFTER [THE EFFECTIVE DATE OF THIS ACT]."

3  
4 **Section 4.** Section 35-18-203, MCA, is amended to read:

5 **"35-18-203. Articles of incorporation.** (1) The articles of incorporation of a cooperative ~~shall recite~~  
6 must state in the caption that ~~they~~ the articles of incorporation are executed pursuant to this chapter, ~~shall~~  
7 must be signed by each of the incorporators, and ~~shall~~ must state:

8 (a) the name of the cooperative;  
9 (b) the address of its principal office;  
10 (c) the names and addresses of the incorporators;  
11 (d) the names and addresses of the persons who ~~shall~~ constitute its first board of trustees; and  
12 (e) any provisions not inconsistent with this chapter ~~deemed~~ considered necessary or advisable  
13 for the conduct of its business and affairs.

14 (2) In addition to provisions required in subsection (1), the articles of incorporation may also  
15 contain:

16 (a) provisions not inconsistent with law regarding liability as set forth provided in 35-1-216; and  
17 (b) provisions for classification of members in a cooperative.

18 (3) ~~Such~~ A cooperative's articles of incorporation ~~shall~~ must be submitted to the secretary of state  
19 for filing as provided in this chapter.

20 (4) It ~~shall~~ is not be necessary to ~~set forth~~ include in the articles of incorporation of a cooperative  
21 the purpose for which it is organized or any of the corporate powers vested in a cooperative under this  
22 chapter."

23  
24 **Section 5.** Section 35-18-301, MCA, is amended to read:

25 **"35-18-301. Members.** (1) ~~No~~ A person who is not an incorporator ~~shall~~ may not become a  
26 member of a cooperative unless ~~such~~ that person ~~shall agree~~ agrees to use ~~electric~~ electrical energy,  
27 electrical energy delivery services, or telephone service ~~furnished by the cooperative when such electric~~  
28 ~~energy or telephone service shall be available through its facilities. The bylaws may provide that any~~  
29 ~~person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to~~  
30 ~~use electric energy or telephone service made available by the cooperative or if electric energy or telephone~~

~~service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof as provided by the cooperative's bylaws.~~

(2) Membership in the cooperative ~~shall not be~~ is not transferable, except as provided in the bylaws. The articles of incorporation or the bylaws may allow joint membership and may prescribe additional qualifications, ~~and limitations, rights, and obligations~~ in respect to any membership and membership class, including but not limited to the number of trustees that each class or membership or class or classes of membership within a voting district under 35-18-313 are entitled to elect.

(3) The articles of incorporation or the bylaws of a cooperative may provide for classifications of members in a cooperative.

(4) Members or a class or classes of members may designate voting delegates, as provided by 35-18-313 and the cooperative's bylaws, and may vote through their designated voting delegates. The bylaws may provide that each classification of members may designate a different number and method for selecting and governing voting delegates."

**Section 6.** Section 35-18-313, MCA, is amended to read:

**"35-18-313. Voting districts.** (1) (a) For corporations organized under the provisions of 35-18-105(2), ~~Notwithstanding~~ notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies ~~electric energy or~~ telephone service to its members ~~shall~~ must be divided into two or more voting districts and that in respect to each ~~such~~ voting district:

~~(a)(i) a designated number of trustees shall be elected by the members residing therein in the voting district shall elect a designated number of trustees;~~

~~(b)(ii) a designated number of delegates shall be elected by the members residing therein in the voting district shall elect a designated number of delegates; or~~

~~(c)(iii) both such trustees and delegates shall be elected by such the members shall elect both trustees and delegates.~~

~~(2)(b) In any such case the~~ The bylaws shall must prescribe the manner in which ~~such the~~ voting districts and the members ~~thereof~~ of those voting districts and the delegates and trustees, if any, elected ~~therefrom~~ from those voting districts shall function and the powers of the delegates, which may include the power to elect trustees.

(3)(c) ~~No~~ A member present at any voting district meeting and ~~no~~ a delegate present at any meeting ~~shall~~ may not vote by proxy or by mail.

(2) (a) For corporations organized under the provisions of 35-18-105(1), notwithstanding any other provisions of this chapter, the bylaws may provide that the territory or geographic area in which a cooperative operates to serve members, or a class or classes of members, must be divided into two or more voting districts and that in respect to each voting district:

(i) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of trustees;

(ii) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of delegates; or

(iii) the members or the members of a membership class or classes shall elect both trustees and delegates.

(b) This section does not restrict or prohibit a cooperative from using any combination of voting districts based on members or classes of members within a territory or geographical area or voting districts at large based on members or classes of members using one or more kinds of service or product provided by the cooperative.

(c) The bylaws must prescribe the manner in which the voting districts and the trustees and delegates, if any, elected from those voting districts shall function and the powers of the delegates, which may include the power to elect trustees and adopt, amend, or repeal the bylaws of a cooperative.

(d) A member present at any voting district meeting and a delegate present at any meeting may not vote by proxy or by mail."

~~NEW SECTION. SECTION 7. COORDINATION INSTRUCTION. IF SENATE BILL NO. 446 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN SENATE BILL NO. 446 IS VOID.~~

NEW SECTION. Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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